

194-10-996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of) MM DOCKET NO. 95-154

CONTEMPORARY MEDIA, INC.)

Licensee of Stations WBOW(AM), WBFX(AM), and)
WZZQ(FM), Terre Haute, Indiana)

Order to Show Cause Why the Licenses for Stations)
WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute,)
Indiana, Should Not be Revoked)

CONTEMPORARY BROADCASTING, INC.)

Licensee of Station KFMZ(FM), Columbia, Missouri, and)
Permittee of Station KAAM-FM, Huntsville, Missouri (unbuilt))

Order to Show Cause Why the Authorizations for Stations)
KFMZ(FM), Columbia, Missouri; and KAAM-FM, Huntsville,)
Missouri, Should Not be Revoked)

LAKE BROADCASTING, INC.)

Licensee of Station KBMX(FM), Eldon, Missouri, and)
Permittee of Station KFXE(FM), Cuba, Missouri)

Order to Show Cause Why the Authorizations for Stations)
KBMX(FM), Eldon, Missouri; and KFXE(FM), Cuba,)
Missouri, Should Not be Revoked)

LAKE BROADCASTING, INC.)

For a Construction Permit for a New FM Station on)
Channel 244A at Bourbon, Missouri)

To: Administrative Law Judge
Arthur I. Steinberg

DOCKET FILE COPY ORIGINAL

) File No. BPH-921112MH

MASS MEDIA BUREAU'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
ISSUE ONE

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**MASS MEDIA BUREAU'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Preliminary Statement

1. By Order to Show Cause and Notice of Apparent Liability, FCC 95-410, released October 10, 1995 ("Order to Show Cause"), the Commission designated the above-captioned licenses and applications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc. (collectively, "Licensees"), for hearing on the following issues:

1. To determine the effect of Michael Rice's convictions on the basic qualifications of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
2. To determine whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., misrepresented to the Commission that, subsequent to his arrest, Michael Rice has been excluded from the management and operation of the Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc., radio stations.
3. To determine pursuant to Section 310(d) of the Communications Act of 1934, as amended, and Section 73.3540 of the Commission's Rules, whether Michael Rice engaged in the unauthorized transfer of control of Contemporary Media, Inc., Contemporary Broadcasting, Inc., and Lake Broadcasting, Inc.
4. To determine, in light of the evidence adduced under the foregoing issues, whether Contemporary Media, Inc., Contemporary Broadcasting, Inc., and/or Lake Broadcasting, Inc., possess the requisite qualifications to be or remain Commission licensees of their respective stations.

2. A hearing on the above issues was held on April 9, 1996. The record has not been closed. The hearing has been continued sine die, pending presentation of the Mass Media Bureau's rebuttal case on Issue 2.

PROPOSED FINDINGS OF FACT

Issue One

Preliminary Statement

Contemporary Media, Inc.

1. Contemporary Media, Inc. ("CMI"), is the licensee of Stations WBOW(AM), WBFX(AM), and WZZQ(FM), Terre Haute, Indiana. Michael Stephen Rice ("Rice") is the President, Treasurer, a Director, and 100% shareholder of CMI. (MMB Ex. 1, p. 2).

Contemporary Broadcasting, Inc.

2. Contemporary Broadcasting, Inc. ("CBI"), is the licensee of Station KFMZ(FM), Eldon, Missouri; and the permittee of Station KAAM-FM, Huntsville, Missouri. CMI is the 100% shareholder of CBI. Rice is the President, Treasurer, and a Director of CBI. (MMB Ex. 1, p. 2).

Lake Broadcasting, Inc.

3. Lake Broadcasting, Inc. ("LBI"), is the licensee of Station KBMX(FM), Eldon, Missouri; the permittee of Station KFXE(FM), Cuba, Missouri; and an applicant for a new FM station on Channel 244A at Bourbon, Missouri (File No. BPH-921112MH). Rice is the President, Treasurer, and 67.5% shareholder of LBI. (MMB Ex. 1, p.2).

Michael Rice's Convictions

4. Rice was convicted on August 31, 1994, in the Circuit Court of St. Charles

County, Missouri, of the following offenses: (i) four counts of sodomy, a Class B felony under the laws of Missouri (§ 566.060 RSMo.); (ii) six counts of deviate sexual assault in the first degree, a Class C felony (§ 566.070 RSMo.); and two counts of deviate sexual assault in the second degree, a Class D felony (§ 566.080 RSMo.). (MMB Ex. 1, pp. 2-3).

5. The felonies for which Rice was convicted involved the sexual abuse of six juveniles ranging from under 14 to 16 years of age. (MMB Ex. 1, pp 7-11).¹ The felonies occurred over the five year period between 1985 and 1990. On August 31, 1994, Rice was sentenced to eight years in prison for each of the four sodomy counts, seven years in prison for each of the six deviate sexual assault in the first degree counts, and five years in prison for each of the two deviate sexual assault in the second degree counts. Altogether, Rice was sentenced to 84 years in prison. On September 30, 1994, Rice reported to the Sheriff of St. Charles County, Missouri, to begin serving his prison sentence. Rice is presently incarcerated. (MMB Ex. 1, p. 3).

6. The licensee submitted four statements attesting to Michael Rice's character. (Contemporary Ex. 5).

7. The LBI and CBI stations have never been fined by the Commission. CMI's stations WBOW and WZZQ have been fined once, in 1989, for logging violations.

¹ The six are identified as CZ, KM, MCF, MM, TF and BRM. (MMB Ex. 1, pp. 38-39 and 44).

(Contemporary Ex. 1, p. 14).

Conclusions of Law

1. In the 1986 Character Policy Statement, 102 FCC 2d 1179, 1195-97, the Commission stated that in assessing the character qualifications of a licensee it would consider two categories of misconduct: FCC related and non-FCC related. With respect to non-FCC misconduct the Commission stated it was concerned with adjudicated misconduct which reflected on the applicant's or licensee's proclivity to deal truthfully with the Commission. In addition the Commission stated that it would consider non-FCC misconduct as prima facie evidence that an applicant lacked the traits of reliability and/or truthfulness necessary to be a licensee if the misconduct was "so egregious as to shock the conscience and evoke almost universal disapprobation." 102 FCC 2d at 1205 n. 60. In 1990 the Commission expanded the 1986 Character Policy Statement to provide that any felony conviction, not just those involving fraud or untruthfulness, is relevant to the consideration of an applicant's or licensee's character. See Policy Regarding Character Qualifications in Broadcast Licensing, 5 FCC Rcd 3252 (1990) ("1990 Character Policy Statement").

2. Here, it is undisputed that Rice has been convicted of sexually abusing six juveniles over a five year period of time. As the Commission stated in its Order to Show Cause in this case, "[w]hile the pattern of child abuse and assault for which Rice was convicted may well be behavior which so shocks the conscience as to have been within the purview of the more lenient 1986 Character Policy Statement, it is most certainly within the

"any felony" misconduct that is within the purview of the 1990 Character Policy Statement." (Order to Show Cause at n. 9).

3. Moreover, the record here is devoid of probative evidence sufficient to mitigate the serious multiple felonies for which Rice has been convicted. In determining the relevancy of a conviction on a licensee's character, the 1986 Policy Statement said the Commission would consider the following factors: 1) the nature and seriousness of the crime; 2) nearness or remoteness in time; 3) rehabilitation of the offender; 4) willfulness of the misconduct; 5) frequency of the misconduct; 6) nature of the participation, if any, of the manager or owners; 7) any remedial action taken by the licensee to curb the conduct and or dismiss the perpetrator; and 8) the licensee's past record of complying with the Commission's Rules. 102 FCC 2d 1197 n. 42, 1227-8. See also, 1990 Character Policy Statement, 5 FCC Rcd at 3252.

4. Under each of the above-enumerated factors the Licensees either have presented no evidence or evidence which is trivial when compared to the seriousness of the crimes for which Rice was convicted. Rice's multiple felony convictions involving the sexual abuse of children, over a five year period of time, are extremely serious crimes that shock the conscience. Rice's crimes are not remote in time as evidenced by the fact that he is currently in prison. No significant evidence of rehabilitation has been presented.² And,

² Factors relevant to an applicant's rehabilitation include the applicant's reputation for good character in the community. The licensees have presented four statements directed to Rice's character.

while the Licensees may argue that Rice has been "insulated" from station affairs, the fact is that Rice is the 100% owner of two of the licensee corporations and majority owner of the third (LBI). Consequently, his ability to control the corporations remains undiminished.³ (As noted at paragraph 13 of the Order to Show Cause, "Rice's alleged exclusion from control of the stations will extend apparently, only for as long as Rice desires it to continue.") The sexual abuse of children by Rice was willful and there has been no showing by the Licensees that Rice lacked criminal intent. Rice's criminal activity was frequent, involving the sexual abuse of six different boys over a five year period of time. The perpetrator here cannot be dismissed -- he owns the Licensees. Finally, the fact that the Licensees' stations have operated generally in conformity with the Commission's Rules cannot outweigh the magnitude of the wrongdoing for which Rice has been convicted.

5. Commission precedent supports revocation when a licensee, such as Rice, is convicted of a heinous felony. In South Carolina Radio Fellowship, 6 FCC Rcd 4823 (1991), the Commission revoked the license of a convicted drug trafficker. In doing so the Commission held that "in light of [the licensee's] criminal activities it would disserve the public interest to permit him to keep his license." In the South Carolina Radio Fellowship case, the Commission found that the wrongdoing was recent and that, like the instant case, the licensee had "made no significant showing of mitigating circumstances or rehabilitation

³ Even complete stock divestiture in conjunction with exclusion from day-to-day operational control is not sufficient grounds to preclude revocation for felonious non-FCC conduct of a key principal where the specter of that principal's influence remains. Petroleum v. Nasby Corp., FCC 96-103, released March 20, 1996.

despite the opportunity to do so." 6 FCC Rcd at 4824. On these facts, the Commission concluded that "the [licensee's] drug conviction is itself sufficient basis for revocation" Id. Thus, as the Review Board has noted, "where the conduct is egregious, the Commission may find a lack of character without specifically finding a nexus between the felony conviction and the applicant's truthfulness and reliability." Richard Richards, 10 FCC Rcd 3950, 3955 (1995).⁴ Moreover, the Order to Show Cause in this case, at paragraph 10, makes clear that the Commission does not consider drug trafficking any "more serious or heinous than other felonies in general or than child sexual abuse in particular."

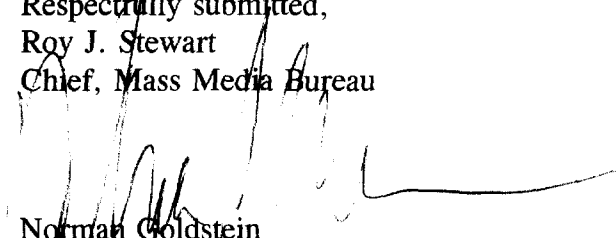
Ultimate Conclusion

6. Rice is the 100% owner of two of the three captioned licensees and majority owner of the third. In the absence of any significant showing of mitigating circumstances or

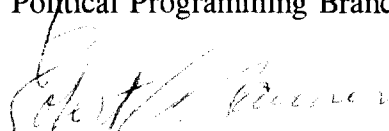
⁴ In the Richard Richards case, the Review Board reversed the ALJ and found Richards qualified to be a Commission licensee despite a felony drug conviction for possessing marijuana with the intent to distribute. In the Richards case, however, the Board found mitigating evidence, including the fact that Richards was rehabilitated and that his wrongdoing did not include preying on others. 10 FCC Rcd at 3958-59. Even so, the Board found the question of whether Richards had the requisite qualifications to remain a licensee to be "a close one." 10 FCC Rcd at 3959. Here, where there is no evidence of rehabilitation and the wrongdoing involved preying on juveniles, the result clearly must be different.

rehabilitation, Rice's multiple convictions for the sexual abuse of six juveniles, for which he received prison sentences totalling 84 years, warrants revocation of the licenses of the above-captioned Licensees and the dismissal of their pending applications for new facilities.

Respectfully submitted,
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April 18, 1996

CERTIFICATE OF SERVICE

Natalie Moses, a secretary in the Complaints and Political Programming Branch,
Mass Media Bureau, certifies that she has on this 18th day of April 1996, sent by regular
United States mail, copies of the foregoing **Mass Media Bureau's Proposed Findings of
Fact and Conclusions of Law Issue One**" to:

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